



October 6, 2022

FILED VIA FOIAONLINE.GOV

National FOIA Office  
Office of General Counsel  
US Environmental Protection Agency  
1200 Pennsylvania Avenue, NW, Mail Code 2310A  
Washington, DC 20460

Re: Freedom of Information Act Request

Dear FOIA Officer:

I am making this request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Please provide the following records:

**Each written authorization issued pursuant to 5 C.F.R. § 2635.502(d) between and including August 1, 2015, and October 6, 2022.**

**Note 1: If preferable, POGO would be willing to limit this request to authorizations issued to senior political appointees during the indicated time period. The term “senior political appointee” is meant to include only the following individuals: a Senate-confirmed presidential appointee (PAS), a presidential appointee (PA), or a noncareer member of the Senior Executive Service (or equivalent federal executive service).**

**Note 2: This request is not limited to authorizations issued to employees of headquarters offices. The headquarters ethics office oversees the ethics programs for all agency components.**

All of these records are likely with your ethics office. Your agency's Designated Agency Ethics Official is James Payne, and the Alternate Designated Agency Ethics Official is Justina Fugh ([ethics@epa.gov](mailto:ethics@epa.gov), 202-564-1786).

### **FEE WAIVER REQUEST**

I request a waiver of all costs associated with fulfilling this submission pursuant to 5 U.S.C. §552(a)(4)(A)(iii).

Disclosure of the requested information will further the “public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government

and is not primarily in the commercial interest” of the requester, the Project On Government Oversight (POGO). Specifically, POGO will use the information requested to inform the public about the government’s operations and efforts to combat conflicts of interest and corruption in the government. POGO holds no commercial interest in the requested information. The information will be used strictly for the public interest. We do not charge for access to information posted on our website, or for our reports, newsletters, and other printed materials.

POGO requests that a waiver of any search or review fees associated with fulfilling this request, pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II), because POGO qualifies as a member of the news media. POGO publishes news stories and investigative reports for the public, including reports issued in conjunction with other media outlets.<sup>1</sup>

POGO is organized as a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code and uses its significant public platform to routinely and systematically disseminate information to the public.<sup>2</sup> POGO’s website includes original reporting, analyses, reports, records, database systems, and other materials of significant public interest that are accessed frequently by the public, other media outlets, and congressional staffs.<sup>3</sup>

### *Analysis of Fee Waiver Request*

This letter provides a detailed account of POGO’s planned use of the requested information and responds to fee waiver criteria. Specifically, POGO demonstrates that disclosure of the requested information is in the public interest because it is likely to contribute significantly to a broad public understanding of the operations and activities of the government, that the requested material is not primarily in POGO’s commercial interest, and that the requested information will be provided and distributed to the public.

In essence, regulations provide that records responsive to a request will be *furnished without charge* or at a charge reduced below that established under paragraph (a) of this section where an agency determines, based on all available information, that the requester has demonstrated that: (a) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (b) disclosure of the information is not primarily in the commercial interest of the requester. The following discusses the ways in which this standard is met in the instant case:

---

<sup>1</sup> See, e.g., Nick Schwellenbach and Adam Zagorin, “Inside the Capitol Cops’ Jan. 6 Blame Game,” *Rolling Stone*, June 8, 2022 (“This story is co-published with the Project on Government Oversight, an independent non-profit watchdog group.”), <https://www.rollingstone.com/politics/politics-features/jan6-capitol-police-donald-trump-whistleblower-1362726/>.

<sup>2</sup> Nat’l Sec. Archive v. U.S. Dep’t of Defense, 880 F.2d 1381, 1386 (D.C. Cir. 1989).

<sup>3</sup> See, e.g., Nick Schwellenbach and Adam Zagorin, “Protecting the Predators at DHS,” Project On Government Oversight, April 7, 2022, <https://www.pogo.org/investigation/2022/04/protecting-the-predators-at-dhs>. The *New York Times* picked up this story from POGO. Chris Cameron, “D.H.S. Watchdog Said Damaging Findings Removed From Reports Were Already Known,” *New York Times*, May 10, 2022 (“The New York Times reported last month on the removal of the damaging findings, after reviewing internal documents first obtained by the Project on Government Oversight, an independent watchdog group in Washington.”), <https://www.nytimes.com/2022/05/10/us/politics/homeland-security-misconduct-reports.html?searchResultPosition=6>.

1. The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government.”

The requested records pertain to the operations or activities of the government because the information sought pertains to the compliance of executive branch officials with government ethics regulations in connection with the performance of operations and activities of the government. Specifically, authorizations issued pursuant to 5 C.F.R. § 2635.502(d) are legally operative records that excuse government officials from complying with government-wide ethics regulations that would otherwise compel their recusal from matters in which they have apparent conflicts of interest. The integrity of operations and activities of the government is directly implicated by the agency’s issuance of the requested records, which free agency employees from ethics restrictions integral to the performance of their duties in connection with agency operations and activities.

2. The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities.

The public is currently unaware of the agency’s issuance of the authorizations sought. As a result, the public has no way to know when an agency official is carrying out government operations and activities without complying with government ethics rules designed to safeguard the integrity of those operations and activities. This leaves the public unable to gauge the degree to which the operations and activities of the agency are being carried out ethically, or whether the agency’s ethics officials are complying with applicable standards for the issuance of such authorizations.

The issuance of an authorization or waiver directly affects government operations or activities. A 5 C.F.R. § 2635.502(d) authorization permits an employee to participate in a matter despite the employee having a relationship with one of the parties to the matter or their representative.<sup>4</sup> The agency has chosen not to release this information proactively and, as a result, the public is entirely unaware of instances in which the government has decided not to enforce its own ethics regulations. Disclosure of this information will contribute to an understanding of government operations and activities because the public is currently in the dark as to when agency employees are carrying out government operations and activities with apparent conflicts of interest as a direct result of the agency’s issuance of an authorization. Knowing when agency employees were shielded from the application of ethics rules by authorizations issued under 5 C.F.R. § 2635.502(d) will allow the public to assess the very integrity of agency operations and activities. Disclosure of the requested information would also contribute to an understanding of whether the agency is including in its authorizations and waivers case-specific limitations to ensure that, notwithstanding the waiver of government ethics rules, the integrity of government operations and activities is not compromised.

---

<sup>4</sup> 5 C.F.R. § 2635.502.



3. The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to “public understanding.”

The release of this information would promote accountability by increasing the public’s knowledge the agency’s use of waivers. As one of the oldest and most respected public watchdog groups, POGO has a large following of hundreds of thousands of readers, listeners, and viewers through its website,<sup>5</sup> newsletters,<sup>6</sup> social media accounts,<sup>7</sup> reports,<sup>8</sup> print media,<sup>9</sup> radio,<sup>10</sup> television,<sup>11</sup> and podcasts.<sup>12</sup> POGO routinely disseminates information it receives to the public and intends to do so in this case.<sup>13</sup>

POGO’s employees possess special expertise, making its analyses of the information particularly useful to public understanding. The undersigned senior ethics fellow is a former director of the U.S. Office of Government Ethics, and is intimately familiar with the proper application of the ethics regulations and the issuance of authorizations under 5 C.F.R. § 2635.502(d). Other POGO staff have comparable experience and expertise in government ethics regulations.<sup>14</sup>

By publishing requested records or analyses of the records, POGO will greatly increase the public’s understanding of the integrity of government activities and operations. The

---

<sup>5</sup> Project On Government Oversight, [www.pogo.org](http://www.pogo.org).

<sup>6</sup> Project On Government Oversight, “Sign Up For Our Newsletters and Alerts,” [https://www.pogo.org/subscribe?utm\\_source=bridge&utm\\_medium=email&utm\\_content=footer&emci=a45626dd-7645-ed11-b495-002248258d38&emdi=1d40bbee-8f45-ed11-b495-002248258d38&ceid=202288](https://www.pogo.org/subscribe?utm_source=bridge&utm_medium=email&utm_content=footer&emci=a45626dd-7645-ed11-b495-002248258d38&emdi=1d40bbee-8f45-ed11-b495-002248258d38&ceid=202288).

<sup>7</sup> See, e.g., Twitter account of the Project On Government Oversight (@POGOwatchdog) (over 43,000 followers), [https://twitter.com/POGOwatchdog?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor](https://twitter.com/POGOwatchdog?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor). See, e.g., Twitter account of Walter Shaub (@waltshaub) (over 689,000 followers), [https://twitter.com/waltshaub?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor](https://twitter.com/waltshaub?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor).

<sup>8</sup> Nick Schwellenbach, Neil Gordon, Sean Moulton, and Leslie Garvey, “Swindle: Feds Botched Review of Billions in Suspect PPP Loans,” Project On Government Oversight, October 6, 2022, <https://www.pogo.org/investigation/2022/10/the-great-pandemic-swindle-feds-botched-review-of-billions-in-suspect-ppp-loans>.

<sup>9</sup> Walter Shaub, “Biden promised massive ethics reforms. Why hasn’t he started yet?” *Washington Post*, March 17, 2021, <https://www.washingtonpost.com/outlook/2021/03/17/biden-ethics-reforms-lobbyists/>.

<sup>10</sup> See, e.g., Scott Horsley, “Did Emergency PPP Loans Work? Nearly \$800 Billion Later, We Still Don’t Know,” NPR, April 27, 2021, <https://www.npr.org/2021/04/27/990888476/did-emergency-p-p-p-loans-work-nearly-800-billion-later-we-still-dont-know>.

<sup>11</sup> See, e.g., “Walter Shaub slams Rand Paul for failing to disclose his wife’s COVID stock purchase,” *CNN* (via YouTube), August 12, 2021, [https://www.youtube.com/watch?v=Mrlm\\_hv9mas](https://www.youtube.com/watch?v=Mrlm_hv9mas). See, e.g., Twitter, @TheLeadCNN, “‘This isn’t a right, left or center issue. This is a right and wrong issue and it’s objectively clear that Nancy Pelosi is wrong,’ says Walter Shaub, fm. director of the Office of Government Ethics, on House Speaker Pelosi rejecting a ban on stock trading for lawmakers.” December 16, 2021, at 5:48 p.m. (tweet with video clip of CNN appearance) <https://twitter.com/TheLeadCNN/status/1471613329420521476?s=20>.

<sup>12</sup> Dahlia Lithwick, “Jan. 6: The Coup That Wasn’t, but Still Could Be,” *Slate* (Amicus podcast), December 21, 2021, <https://slate.com/podcasts/amicus/2021/12/jan-6-committee-accountability>.

<sup>13</sup> See, e.g., Project On Government Oversight, “COVID Spending Tracker,” last viewed January 9, 2022, <https://covidtracker.pogo.org/>.

<sup>14</sup> See, e.g., Project On Government Oversight, “Board & Staff,” last viewed January 9, 2022, <https://www.pogo.org/about/people/>.

concern for accountability lies at the heart of this FOIA request.

4. The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

The records requested will contribute significantly to the public’s understand of government operations or activities because the public is currently unaware of the scope of the agency’s issuance of authorizations under 5 C.F.R. §2635.502(d). The agency has chosen not to release these records proactively, leaving the public in the dark as to the degree to which the agency’s use of authorizations and waivers may be affecting the integrity of its operations and activities. Without the requested information, the public is incapable of fully monitoring potential for corruption in the executive branch. The U.S. Department of Justice has explained:

One purpose that the FOIA was designed for is to “check against corruption and to hold the governors accountable to the governed.” Indeed, information that would inform the public of violations of the public trust has a strong public interest and is accorded great weight in the balancing process.<sup>15</sup>

Thus, the requested records serve the fundamental purpose of FOIA and are needed to ensure the integrity of government. This is the very definition of a “significant” contribution to the public’s understanding of government operations or activities.

5. Disclosure of the information “is not primarily in the commercial interest of the requester.”

Disclosure of the requested information is not primarily in the commercial interest of the requestor because POGO has no commercial interest whatsoever in the requested information. As described above, POGO is a nonprofit organization dedicated to the public interest. POGO releases records that it obtains and analyses that it creates based on such records to the public free of charge.

## **CONCLUSION**

If this request is denied, in full or in part, please cite the exemptions pursuant to 5 U.S.C. § 552(b) that justify the denial. If an exemption applies, however, please consider exercising the agency’s discretionary release powers to disclose the information. Additionally, please release all reasonably segregable portions of that information that do not meet an exemption.

I look forward to your response within 20 days of the receipt of this request, unless, in the case of “unusual circumstances,” the time limitation is “extended by written notice.” I am aware that I have a right to appeal this request if it is wholly or partially denied or if the agency fails to

---

<sup>15</sup> U.S. Department of Justice, *Freedom of Information Act Guide*, May 2004 (internal citations omitted), <https://bit.ly/2JxXc8H>.

respond within 20 days. I am aware that, if successful, a federal district court may assess “reasonable attorney fees and other litigation costs” pursuant to 5 U.S.C. § 552(a)(4)(E).

Please contact me if this request requires further clarification. I can be reached at 571-243-0131, or via e-mail [walter.shaub@pogo.org](mailto:walter.shaub@pogo.org). Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter M. Shaub, Jr.", with a stylized flourish at the end.

Walter M. Shaub, Jr.  
Senior Ethics Fellow